

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS D. YOUNG and  
FREDA YOUNG,

Plaintiffs,

Case No. 1:06-cv-387

v

Hon. Wendell A. Miles

JUDGE CALVIN L. BOSMAN,  
individually and in his capacity as  
Circuit Court Judge in Grand Haven,  
County of Ottawa, State of Michigan,

Defendant.

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ORDER ON DEFENDANT'S MOTION FOR DISMISSAL

Plaintiffs Thomas D. Young and Freda Young, appearing *pro se*, filed this civil rights action against defendant Calvin L. Bosman, a Circuit Judge in Ottawa County, Michigan. The case is currently before the court on a motion by Judge Bosman for dismissal under Fed.R.Civ.P. 12(b)(6) for failure to state a claim (docket no. 4). Plaintiffs have not responded to the motion.

For the reasons to follow, the court GRANTS the motion.

**Discussion**

Although the complaint is rife with conclusions and largely empty of facts, it appears that plaintiffs' claims arise from a proceeding filed by Jamestown Charter Township against plaintiffs in Ottawa County Circuit Court. The action was assigned to Judge Bosman. It is not known whether the action is still pending or has concluded. What is clear is that plaintiffs are

not satisfied with Judge Bosman's handling of the action. Their complaint filed in this federal court action seeks a vague declaratory judgment that Judge Bosman's actions "are arbitrary and capricious, and do not represent the exercise of reasonable discretion granted by law."

Complaint at 9.

Judge Bosman seeks dismissal for failure to state a claim under Fed.R.Civ.P. 12(b)(6). Fed.R.Civ.P. 12(b)(6) permits a district court to dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." A motion under the rule may be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957); Miller v. Currie, 50 F.3d 373, 377 (6th Cir.1995). In deciding a motion under Rule 12(b)(6), the court accepts all of the allegations as true and construes the complaint "liberally in favor of the party opposing the motion." Miller, 50 F.3d at 377. A district court need not, however, accept as true legal conclusions or unwarranted factual inferences. Michigan Paytel Joint Venture v. City of Detroit, 287 F.3d 527, 533 (6<sup>th</sup> Cir. 2002); Gregory v. Shelby County, 220 F.3d 433, 446 (6th Cir.2000). "To survive a motion to dismiss under Fed.R.Civ.P. 12(b)(6), a complaint must contain either direct or inferential allegations respecting all the material elements to sustain recovery under *some* viable legal theory." Begala v. PNC Bank, Ohio, Nat'l Assn., 214 F.3d 776, 779 (6<sup>th</sup> Cir. 2000) (emphasis in original; internal quotations and citation omitted).

Although Judge Bosman invokes Fed.R.Civ.P. 12(b)(6) in support of his motion, he asserts as grounds for dismissal both judicial immunity and Eleventh Amendment immunity. The latter is, of course, a sovereign immunity defense which – if it applies – would result in a

non-merits dismissal, not a dismissal for failure to state a claim. As a Sixth Circuit panel recently noted, that court has not “spoken with one voice on whether we must, or whether we may, resolve a sovereign-immunity defense before addressing the merits.” Nair v. Oakland County Community Mental Health Authority, 443 F.3d 469, 474 (6<sup>th</sup> Cir. 2006).

Whatever the proper order for addressing a sovereign immunity defense, in this case the alternative defense asserted by Judge Bosman – judicial immunity – does not dispose of the case. Although a judge is absolutely immune from damages liability for his judicial acts when sued under 42 U.S.C. § 1983, Stump v. Sparkman, 435 U.S. 349, 359, 98 S.Ct. 1099, 1106 (1978), the plaintiffs in this action have made no claim for damages. Instead, they seek only declaratory relief. However, declaratory relief is not barred by the doctrine of judicial immunity. Sevier v. Turner, 742 F.2d 262, 269 (6th Cir. 1984). Therefore, Judge Bosman’s assertion of judicial immunity does not resolve the case, making it necessary for this court to address the question of Eleventh Amendment immunity.

The Eleventh Amendment to the Constitution reads as follows:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. The Supreme Court has long read the amendment to mean “that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State.” Nelson v. Miller, 170 F.3d 641, 646 (6th Cir.1999) (quoting Edelman v. Jordan, 415 U.S. 651, 663, 94 S.Ct. 1347 (1974)). Nevertheless,

courts have recognized that there is no Eleventh Amendment bar in three

instances: (1) where the state has consented to suit; (2) where the application of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), and its progeny is appropriate; or (3) where Congress has abrogated the state's immunity.

Nelson, 170 F.3d at 646. Because the state has not consented to suit and Congress has not abrogated the state's immunity, the court will proceed to address the Ex parte Young exception.

In Ex parte Young, the Supreme Court created an exception to the Eleventh Amendment for suits seeking equitable or declaratory relief against state officials. The reasoning behind the Ex parte Young exception is that "a suit challenging the constitutionality of a state official's action in enforcing state law is not one against the State." Green v. Mansour, 474 U.S. 64, 68, 106 S.Ct. 423, 426 (1985) (citation omitted). However, the Ex parte Young exception has been narrowly construed, in accordance with its rationale. The exception is, for example, limited to allegations that state officials violated federal rather than state law. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 106, 104 S.Ct. 900, 911 (1984); Lee v. Western Reserve Psychiatric Habilitation Center, 747 F.2d 1062, 1066 (6<sup>th</sup> Cir. 1984). In addition, where a plaintiff seeks only to rectify a past wrong and there is no claimed continuing violation of federal law, declaratory relief is not available. Green, 474 U.S. at 73-74, 106 S.Ct. at 428-429.

In this case, plaintiffs allege only that Judge Bosman acted in violation of state laws and abused his discretion. They do not allege facts establishing a violation of the United States Constitution or any federal laws. Ex parte Young is therefore inapplicable here, and plaintiffs' claims in this federal action are barred by the Eleventh Amendment.

**Conclusion**

Plaintiffs' claims in this action are barred by the Eleventh Amendment. Defendant's motion is therefore GRANTED and this action is dismissed.

So ordered this 24th day of August, 2006.

/s/ Wendell A. Miles  
Wendell A. Miles  
Senior U.S. District Judge